IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 182 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURAT DIST COOP SPINNING MILLSLTD

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 182 of 1986
MR JP SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 10/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the applicant-assessee, the following three questions have been referred to this Court for its opinion under the provisions of Section 256(2) of the Income Tax Act, 1961 (hereinafter, referred to as "the Act"), by the Income Tax Appellate Tribunal, Ahmedabad Bench `B'.

(i) "Whether the Tribunal was right in holding that the case of Cloth Traders Co. (P) Ltd. (118 I.T.R. 243 - Supreme Court, had no application because that case did refer to Sections 80M, 80K, 80MM and 80N but not touch Section 80J, while relying upon the earlier decision in the case of Cambay Electricity Co. Ltd. (115 I.T.R. 84) even though that case also did not touch Section 80J, but only referred to Section 80E?"

(ii) "Whether the Tribunal had erred in not holding that the gross total income included profits from the new industrial undertaking, the relief u/s. 80J has to be allowed first in preference to the order statutory deduction u/s. 32(2), 33 or 72?"

(iii) "Whether the Tribunal was right in holding that the Commissioner of Income Tax had jurisdiction to initiate Section u/s. 263 of the Income Tax Act, 1961, even though the impugned order of assessment was made a subject of appeals?"

2. We have heard learned advocate Shri Manish Shah appearing for the applicant-assessee and learned advocate Shri Bharat Naik for the respondent.

3. Upon perusal of the statement of the case it is very clear that all the three questions have been answered by the Honourable Supreme Court during the pendency of the reference.

4. So far as first and second questions are concerned, the Honourable Supreme Court has answered

similar questions in case of Commissioner of Income Tax v. Kotagiri Industrial Co-operative Tea Factory Ltd., 224 ITR 604. Looking to the law laid down by the Honourable Supreme Court in the said case, we answer both the questions in the affirmative i.e., in favour of the revenue and against the assessee.

5. So far as the third question is concerned, the Honourable Supreme Court has opined in the case of Commissioner of Income Tax v. Shri Arbuda Mills Ltd., 231 ITR 50, that the Commissioner of Income Tax has jurisdiction to initiate proceedings under the provisions of Section 263 of the Act, even though the order of the assessing officer was made subject matter of an appeal. Accordingly, we also answer the third question in the affirmative i.e., in favour of the revenue and against the assessee.

The reference stands disposed of accordingly with no order as to costs.

10.7.2001. (A.R. Dave, J.)

(D.A. Mehta, J.)

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